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This work is available at: **DOAJ****Forest Resources Access Moro-Moro Farmers at Register 45
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The main problem of farmers in Indonesia today is the limited availability of agricultural land. The government gives farmers hope for the availability of agricultural land, through various accesses of forest resources. One of them through a partnership with forest managers. This study will examine the model of forest resource access arrangements and their implementation in Register 45 Sungai Buaya Lampung by Moro-Moro farmers. This study uses a socio-legal approach. This approach combines the study of doctrinal law with social studies. Data required primary data and secondary data. So the analysis is not only based on normative rules but also pay attention to social context. This research shows that forest resource access management model registers 45 Lampung to Moro-Moro farmers is a partnership model. Partnerships offered by forest managers have not provided welfare security to farmers. Forest managers have unilaterally determined types of crops and production sharing balances. The partnership process closes dialogue with farmers. The implementation of this partnership has not been implemented, as most Moro-Moro farmers reject the partnership model offered by forest managers.

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A. Introduction

The obligation to protect the forests is the responsibility of the government and all the people of Indonesia, considering the function of the forest concerning the livelihood of the people. On the one side, people need agricultural land in the forest area, on the other side the forest should be protected, but on the other hand, forest exploitation is given to entrepreneurs with an area that exceeds their capacity. Meanwhile, on the policy side, the government is less involved with the community in the planning, designation, and determination of state forests. As a result, there is often conflict occur of forest utilization in the community, both within the forest area and around the forest area.²

Unilateral appointment of forest areas by the government in the past had been one of the factors which triggered the conflict³ in forest areas⁴, besides to licensing of forest exploitation to the private sector, for example to PT Silva Inhutani Lampung (PT SIL). On the other hand, the community struggled to get land claimed by PT SIL, to be able to continue its livelihood. Land cultivation by the community continues, considering that on one side of the land is abandoned by PT SIL and on the other side there are quite a lot of poor people who need land to be able to extend their life.

During this time, the cultivation of land by Moro-Moro residents is considered illegal, both by the Government (Minister of Forestry and Environment) and by PT SIL. Citizens need legality (guarantee of legal certainty) related to the cultivation of the land. To guarantee legal certainty on the access to forest resources, the government has issued various policies to facilitate such access to the community. One of the offers is through partnerships between community members and HPH-HTI holders, but people are rejected for various reasons. Based on the above explanation, this research would like to examine in the process of the arrangement of forest resource access and its implementation in Register 45 Lampung?

² Salim, *Dasar Dasar Hukum Kehutanaan*, Jakarta: Sinar Grafika, (2013), p.123

³ The 2011 KPA report mentions 163 agrarian conflicts throughout 2011, details of 97 cases in plantation sector, 36 forestry cases, 21 cases of infrastructure sector, eight cases in mining sector and one case in coastal and coastal areas. Throughout the year 2015 land conflicts tends to increase, the data collected by Indonesian Peasant Union (SPI) during 2015, the number of agrarian landfalls that occurred in Indonesia reached 231 cases. This figure is 60% compared to agrarian conflict that occurred in 2014 amounted to 143 cases with conflict land area in Indonesia with total area of agrarian conflict covering 770.341 ha.

⁴ The Court through Decision Number 45/PUU-IX/2011 gave a judicial review on five Regents of Central Kalimantan against the Forestry Law. The Constitutional Court abolished the phrase "appointment and or". In its legal considerations, the Constitutional Court is convinced of the article, the government may be misinterpreted and arbitrarily in granting territory status in the applicant's territory. The reason, in the determination of the area as a forest area enough with the phrase "appointed and or".

B. Research Method

This study uses a socio-legal approach. Socio-legal is a study that combines the study of doctrinal law with social studies. The study materials are legislation and community behavior. Legislation can be categorized properly and well if the substance can accommodate as many aspirations as possible, interests and needs of the community. So the analysis is not only based on the normative rules but also paying attention to social context.

C. Discussion

Period of the economic crisis⁵ in the late 1990s became an important period in the history of forestry in Indonesia especially at Register 45 Sungai Buaya Mesuji Lampung (hereafter referred to as Register 45 Lampung). Conflict developed when on 17 February 1997 the Minister of Forestry issued SK No.93/Kpts-II/1997 on the granting of HTI concession rights over forest area which originally 33,500 ha up to \pm 43,100 ha to PT Silva Inhutani Lampung (PT SIL) for 45 years. PT SIL is considered to take a forced community land area of \pm 10,000 ha. In fact, PT SIL is only able to cultivate the land about 12,000 ha. While in that location, there were quite a lot of farmers (poor people) who needed the land claim, one of them is the Moro Moro Community.

Besides, it realized that the number of poor people in Lampung based on the result of the National Socioeconomic Survey (Susenas) September 2016 reached 1.14 million people (13.86 percent). This amount was reduced compared to March 2016 reached 1.17 million people (14.29 percent).⁶ In general, the poor are landless farming families, who seek to earn their livelihoods from farming, such as Moro-Moro citizens. Based on the results of the 2010 census, the Moro-Moro community numbered 1,300 heads of households (3359 inhabitants),⁷ spread over five hamlet-level areas. In 2006, they formed a peasant organization under the name of the Poor Peasant Farmers Moro-Moro Way Serdang (PPMWS). Currently, each sub-village level consists of 12 groups (so there are 60 groups). Each group consists of

⁵ Various researches indicate that the exchange rate of rupiah depreciated large enough to US \$, which in real terms about 71.6 percent in 1998. In the middle of 1997 the ASEAN countries slumped by the regional economic crisis caused by the depreciation of its currency against the US dollar. Indonesia is the worst of all countries in Asia. The inflation rate in 1998 reached 77.8 percent. This led to an increase in interest rates to reach the highest level of 61.8 percent in September 1998. The economic crisis is bad enough to affect the financial health of entrepreneurs, increasing the number of unemployed, and including economic pressure for farmers/farmers.

⁶ Lampung Poverty Rate, September 2016, quoted from Statistics Agency of Lampung Province, January 3, 2017, <https://lampung.bps.go.id/Brs/view/id/487>, accessed on 23 August 2017 in 14.00 GMT

⁷ Ridwan Hardiansyah, *Kami Bukan Superman*, Bandar Lampung: Indepth Publishing, (2013), p. 28.

16-20 people who work on forest land Register 45 Lampung. Moro-Moro region with an area of ± 2.444 ha⁸ is part of the forest Register 45 Lampung, as well as an entry in HTI PT HTI Concession Rights.

Based on the above description, the parties related to the Moro-Moro community's land are comprised of three elements: first, the Ministry of Forestry and the Environment; second, PT SIL; and third, Moro-Moro citizens. The Ministry of Forestry is a party that has the authority to control Register 45 Lampung, PT SIL as the holder of HPH-HTI, and the Moro-Moro community as a party who needs access to forest resources to carry on their life.

Article 28A of the 1945 Constitution of the Republic of Indonesia has assured that every person shall have the rights to live and have the rights to maintain his life. For farmers, to survive the life, they cannot be separated from the farmland. This means that the government should have made the land available for agricultural business for the people. Considering the very limited agricultural land, while that appears in front of the forest is a forest area that has been burdened HPH-HTI but abandoned, farmers will certainly utilize it in meeting the needs for the sustainability of life. In fact, such condition equally should not happen, the employers should not neglect their land while the citizens/farmers are prohibited from utilizing the land of others without permission, even though the land is being abandoned.

To meet the need for access to natural resources (forests/land) for citizens to maintain in life and live, the government has issued various policies. Apart from the advantages and disadvantages of the form of policy issued by the government, it all depends on the good intentions of the implementers in the field. Considering that the need for land is increasing day by day, the amount of land area is relatively fixed. So throughout human history, the seizure of land resources will never end. Thus, it takes the wisdom of all parties to overcome the problem of limited agricultural land by utilizing forest resources without reducing the function of the forest itself. One of forest resource access policy is forestry partnership.

Forestry Partnership is a collaboration between local communities and forest utilization holders or forest managers, holders of forest primary industry business permits, and forest management units in the capacity building and access granting, on the principle of equality and mutual benefit. This policy was changed into social forestry with the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.83/Menlhk/Setjen/ Kum.1/10/2016 on Social Forestry. This Regulation affirms Social forestry is a system of sustainable forest management

⁸ *Ibid.*

conducted within state forest areas or forest rights/customary forests implemented by local communities or customary law community as the main actors to improve their welfare, environmental balance, and socio-cultural dynamics in the form of village forests, community forests, community plantations, community forests, customary forests, and forestry partnerships.

Through social forestry policies, the Government wants to: (a) create and accelerate equitable access and distribution of forest resource assets; (b) resolve tenurial conflicts in forest areas, and (c) reduce poverty and improving the welfare of people living in and around forest areas. Based on the Ministry of Forestry, the entire territory of Indonesia can be divided into two based on the management authority. The first party, the Ministry of Agrarian Affairs and Spatial Planning (1/3 or 32.26%) to regulate its management, and subject to land law regime (agrarian law in the narrow sense). The second party, the Ministry of Forestry and Environment claiming 2/3 of Indonesia's land area (67.74%) is the forest, which is its authority. Its legal policy adheres to the forestry law regime.

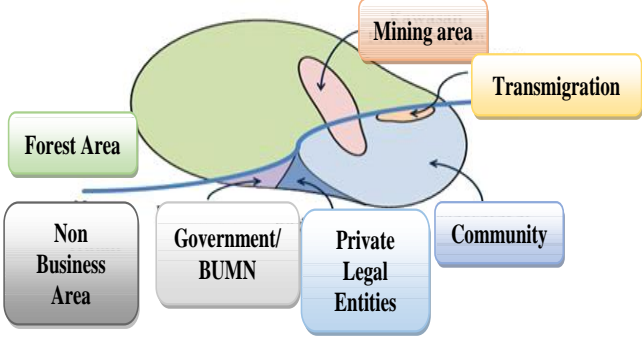
Although 2/3 of Indonesia's territory is claimed as a forest area, in reality, not all of them are covered by forest. In fact, a lot of forest areas which in reality is no longer a forest has become a settlement or a field of weeds or forest without stands. So that forest resource access arrangements, whether for forested and non-forested areas, are subject to forestry law regimes that cannot be confused with the land law regime. Although the political law and the legal system can collaborate, the law regime is done, so there is no conflict which is related to the results of the partnership. Legal politics of access to forest resources, constitutionally arranged in Article 33 paragraph (3) of the 1945 Constitution-NRI, that: the State controls earth and water and natural resources contained therein and used for the greatest prosperity of the people.

As long as forest resources are used for the welfare of the people, although the regulatory regime is different, by referring to the national legal system, everything gets its way out. Just as Sudikno Mertokusumo puts it, the legal system is an essential unity and fragmented into sections, in which each issue or problem finds its answer or its solution. The answer lies in the system or the legal system itself.⁹

Sudikno's opinion is based on a legal notion of a seemingly jumbled set of rules, chaos. The legislation is spelled out a lot and growing every year. That is, for law science is not chaos, but as a whole structured or a system. The law is not just a collection or sum of rules, but something that

⁹ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, 2nd edition, Yogyakarta: Liberty, (2006), p. 103.

stands alone.¹⁰ Law as a system is an order or a unified whole consisting of parts or elements that are closely related to each other. In other words, the legal system is a unity consisting of elements that have interaction with each other and work together to achieve the purpose of the unity; if there will be a problem or trouble, it will find its answer or solution.¹¹



Role 1: Map of land tenure and land conflict map in Indonesia¹²

Table 1. Area of Forest Area Based on Function¹³

Area	Large (± ha)	%
Conservation Forest (Land and Park Rush)	21.780.626,14	11,44
Protected Forest (Hl)	30.539.822,36	16,03
Limited Production Forest (Hpt)	27.967.604,50	14,68
Production Forests (Hp)	30.810.790,34	16,18
Production Forests Can Be Converted (Hpk)	17.924.534,81	9,41
Large Of Forest Area	129.023.378,15	67,74
Areal The Other Uses (Apl)	61.433.521,85	32,26
Total Area Regions of NKRI	190.456.900,00	100,00

Source: Directorate General of Forestry Planning of the Ministry of Forestry, in 2012.

All this time, forest resource access policies are regulated by various regulations and schemes. Forest resource access schemes are divided into

¹⁰ *Ibid.*, p. 102.

¹¹ *Ibid.*

¹² BPN-RI, International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11, 2012

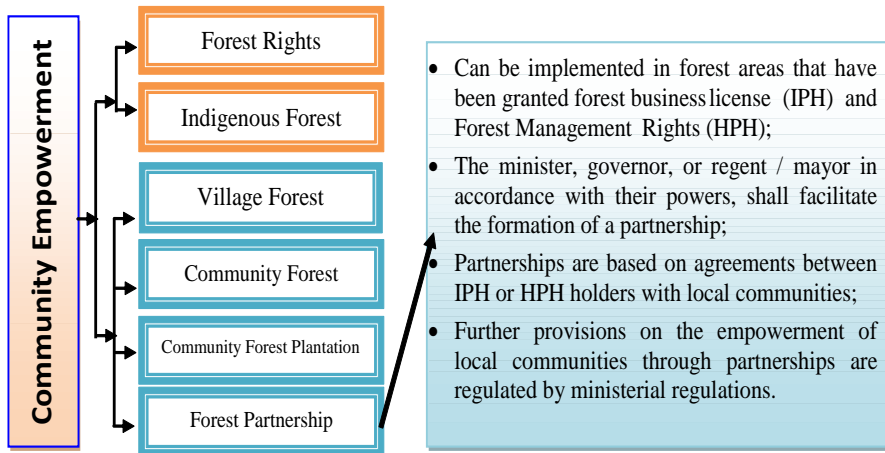
¹³ Director General of Forestry Planning at the Ministry of Forestry, Paper: Forest Area Use Solution for Non Forestry Activities, in the International Conference on "Regulatory Reform on Indonesia Land Laws for People's Welfare", FH UI-BPN RI, Grand Sahid Hotel Jakarta, December 11.

two: 1) forest rights schemes and 2) forest permit/partnership schemes. Forest rights schemes include 1) individual / legal entity rights, and 2) customary forests. For the forest rights scheme, the forest area is removed from the forest area; then the status becomes state land. After becoming a state, land can be submitted a land rights application to the National Land Agency, with the function of the forest, fixed and unchanged. Forestry licensing schemes include a) village forest, b) community forest, c) community plantation and d) forestry partnership. In general, access to forest resources is regulated in various regulations, namely:

1. Law Number 41 of 1999 regarding Forestry, as amended by Act Number 19 of 2004;
2. Government Regulation Number 6 of 2007 regarding Forest Management and Preparation of Forest Management and Forest Utilization Plan, as amended by Government Regulation Number 3 of 2008;
3. Regulation of the Minister of Forestry Number: P.01/Menhut-II/2004 regarding Local Community Empowerment In and Or Around Forest For Social Forestry;
4. Regulation of the Minister of Forestry of the Republic of Indonesia Number P.49 /Menhut-II/ 2008 on Village Forests;
5. Permenhut No P.55/Menhut-II/2011 regarding Procedure of IUPHHK-HTR Application in Plantation Forest;
6. Regulation of the Minister of Forestry of the Republic of Indonesia Number: P.88 /Menhut-II /2014 regarding Community Forests;
7. Regulation of the Minister of Forestry Number P.89/Menhut-II/2014 regarding Village Forest;
8. Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No.P.83 /Menlhk/Setjen/Kum.1/10/2016 regarding Social Forestry.

In particular, the forest resource access policy with the rights forest scheme is regulated by the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.32/ Menlhk-Secretariat/2015 on Right Forests. While forestry permits/partnerships are regulated in the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83/ Menlhk/Setjen/Kum.1/10/2016 About Social Forestry.

Role 2: Access to forest resources



The Moro-Moro community's struggle for legal access forest resources in Register 45 Lampung gets a bright spot with the issuance of Forestry Minister's Regulation No: P.39/ Menhut-II/2013 on Local Community Empowerment through Forestry Partnership. In early 2017, socialization of forestry partnership between the Moro-Moro community and PT SIL was facilitated by the Ministry of Forestry. At that time, Permenhut 39/2013 had been revoked by the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia No. P.83/ Menlhk/Setjen /Kum.1/10/2016 on Social Forestry. Meanwhile, the socialization of partnership was still using the former Permenhut. Whereas the substance of forestry partnership had changed.

There is a substantial regulatory of different substance for the Moro-Moro community. The difference is that in Permenhut 39/2013 the partnership with PT SIL maximum 2 hectares, while in the new regulation, the area of arable land can reach 5 hectares. So for the people who have been working on the land of more than 2 hectares refuse the offer of partnership with PT SIL, considering that in the draft of the partnership agreement, the community is only allowed to work on forest land of a maximum of 2 hectares. In line with the doctrine or legal principle of *posterior lex derogat legi priori*,¹⁴ then the applicable law or regulation is the provisions that regulate the area of 5 hectares of land.

In addition to the extent of arable land that is a problem in partnership, the profit-sharing system and financing system offered to Moro-Moro

¹⁴ B. Arief Sidharta, *Asas Hukum, Kaidah Hukum, Sistem Hukum dan Penemuan Hukum* ", in Susi Dwi Harjanti (ed.), *Negara Hukum yang Berkeadilan, kumpulan pemikiran dalam rangka purnabakti Prof. Dr. H. Bagir Manan, S.H., M.CL.* Bandung: PSKN FH UNPAD, (2011), p. 9.

farmers also experience a lack of common ground. Two ministerial regulations related to forestry partnership only regulate in general, that the profit-sharing system is determined by consensus deliberations. However, in practice, the draft of a partnership agreement related to revenue sharing is determined unilaterally by PT SIL. In other words, PT SIL uses a standard agreement scheme.¹⁵ Sharing system; 1) for timber plants, 25% farmers and 75% PT SIL; 2) for food crops / seasonal, 50% farmers and 50% PT SIL, and besides no more bargaining.

Draft agreement revenue sharing balance above can be understood if it does not agree with the amount of profit sharing offered by PT SIL, the community has no choice but to accept or reject it. If it is refused, PT SIL has prepared a blank/letter of statement refusing the partnership to be signed. If it is accepted, then PT SIL has also prepared a letter of a partnership agreement to be signed. Whereas according to Permenhut about forestry partnership related to the cultivation of land is determined by deliberation for consensus. In the case where an agreement for consensus cannot be reached, there is already a regulation concerning the revenue share as a reference.

Regulations that can be used as a reference or guidance in determining the scale of the production sharing of agricultural land is Law No. 2 of 1960 on Profit Sharing jo. Presidential Instruction no. 13 of 1980.¹⁶ In the elucidation of Article 7 of the Profit Sharing Law states that the balance of profit sharing between the tenants with the landowner or the land ownership is: 1) for rice crops in paddy fields, 50% farmers, and 50% landowners; 2) for polowijo plant species and for dryland crops, 2/3 farmers and 1/3 landowners. The profit sharing balance after deducting the production cost (net proceeds). The balance of revenue sharing is not always binding, each region by the Regent/Mayor can be set differently about the number of counterparts for the outcome. It means that in a Regency/municipality for each region can differ the amount of revenue sharing, adjusted with economic factors in each region. In principle, the revenue-sharing ratio should not harm the farmer. As long as the Regent/Mayor does not stipulate the magnitude of the revenue-sharing ratio, the guidelines used in that area shall be the Provisions of Explanation of Article 7 of the Production Sharing Law.

¹⁵ The standard agreement is a written contract made solely by one of the parties to the contract, often the contract has been printed in the form of certain forms by one of the parties, in which case when the contract is signed generally the parties only fill in the informative data certain with little or no change in its clauses, in which the other party in the contract has no opportunity or little chance to negotiate or amend the clauses already made by either party.

¹⁶ Presidential Instruction No. 13 of 1980 on Guidelines for the Implementation of Law No. 2 of 1960 concerning Production Sharing Agreement.

As a comparison, the study conducted in three locations Garut regency, Tasikmalaya, and Ciamis on the agreement of production sharing partnership about community forest management between farmers and partners for wood crops more side with the farmers. For example in Garut farmers get a 60% share, in Tasikmalaya farmers 75%, while in Ciamis farmers 40%.¹⁷

The above thought is in line with the doctrine or law teachings that the legal structure in Indonesia is like a spider's web.¹⁸ The order can be created with many laws and regulations. Between one rule and the other rules are intertwined and form a legal system such as a cobweb. Every legal system will face the question of contradictions, legal vacuums, and blurred legal norms. Conflicting legal rules (contradictions) need consistency effort (synchronization and harmonization), legal vacuums need to be established, and vague legal norms need legal discovery/interpretation.¹⁹

The issue of regulating the share of the partnership in the forestry sector is the obscurity of the rule of law. Therefore, legal discovery is required. The law that can be used as a reference guide for the results of the forestry partnership, since the Regent of Mesuji has not issued a revenue sharing rule, so that used as a guideline is Law No. 2 on 1960 on Profit Sharing. At the level of forestry partnership practices between PT SIL and Moro-Moro farmers, it turns out far from the existing regulations and very detrimental to the cultivators. It can be seen clearly in table 2 below:

Table 2. Comparison of Profit Sharing Among Forestry Partnership with Production Sharing Law

Types of Plants	PT SIL Partnership Offer with Moro-Moro Farmers	Law No. 2 Of 1960
Food/ Seasonal	PT SIL (which controls the land): 50%	Landlord / owner : 33,3%
	Peasant Moro-Moro (tiller) : 50%	Cultivators : 66,7%
Timber	PT SIL (which controls the land): 75%	Landlord / owner : 33,3%
	Peasant Moro-Moro (tiller) : 25%	Cultivators : 66,7%

¹⁷ Edi Kurniadi, et al, "Kelembagaan Kemitraan Pengelolaan Hutan Rakyat di Provinsi Jawa Barat", *Journal of Plantation Forest Research*, 10 (3), (2013), pp. 164-165.

¹⁸ Whitehead, using the term "law as a network", interpreted a holistic process consisting of actual units, see HR Otje Salman S and Anthon F. Susanto, *Theory of Law, Remembering, Collecting and Reopening*, Bandung: Refika Aditama, (2009), pp. 10-11.

¹⁹ Sumarja, FX., *Hak Atas Tanah Bagi Orang Asing, Suatu Tinjauan Politik Hukum dan Perlindungan Warga Negara Indonesia*, Yogyakarta: STPN Press, (2015), p. 16.

The fact that the revenue share offered by PT SIL is far from the prevailing regulation, given the spirit of the forest resource access rule issued by the government is not realized in the life of the community, especially the Moro-Moro farmers. The spirit of government policy to access forest resources by community members in forest areas or around forest areas is to improve life rate or quality of life of the community. In other words, for people around the forest to live prosperously. Thus, the balance of yields should be 2/3 for Moro-Moro farmers and 1/3 parts for PT SIL, both for food crops/seasonal and timber plants. At least the same as the existing partnership pattern in Garut and Tasikmalaya West Java Province, as noted above.

In fact, it is not just the question of the area of arable land and the counterpart of the reason for the rejection of forestry partnership by the Moro-Moro people. There are still other issues, such as the transparency of financing partnership for profit sharing which is provided by PT SIL. Moro-Moro farmers got traumatized by the fate of brothers from palm oil farmers in other places and areas. The giving by palm production cost was not able to be paid until the age of harvest palm ends. Each time the harvest of palm, the result is cut to repay the loan production costs. It is also feared to fall the fate of Moro-Moro farmers. Including pricing of produce (cassava and wood) will be determined by PT SIL.

The Moro-Moro people are hoping to get legality in the cultivation of agricultural land (Register 45 Lampung). Therefore, in the process of forestry partnership, the community hopes that PT SIL could pay attention to the aspirations of the community, and does not close the dialogue room for determining the share of production sharing and the extent of the land, including the guarantee of transparency in financing the production of forestry partnership.

D. Conclusion

1. The scheme of forest resource access arrangement for Moro-Moro farmers that can be done is to use forestry partnership scheme in line with the Minister of Environment and Forestry Regulation of the Republic of Indonesia no. P.83/Menlhk/Setjen/Kum.1/10/2016 on Social Forestry.
2. Access to Moro-Moro peoples forest resources is legally illegal, as they have no agreement on the partnership system offered by PT SIL. The Moro-Moro farmers reject the limits of the land and the revenue share. They expect PT SIL to pay attention to the wishes of Moro-Moro farmers, considering they are also hoping to get the land legally. So that they can cultivate the land calmly, comfortably and get the result that could improve the rate of the life and the livelihood.

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